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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	))	CC Docket No. 96-45 FCC 99-306

To: The Commission

PETITION FOR RECONSIDERATION

Silver Star Communications ("Silver Star" or "Petitioner"), pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, hereby respectfully submits this Petition for Reconsideration of certain limited aspects of the Commission's *Ninth Report & Order*.[1] By this Petition, Silver Star requests that the Commission determine, at least for the State of Wyoming, that the distribution to individual wire centers of Universal Service high-cost support should be in accordance with the proration methodology under the forward-looking cost methods, rather than solely by application of the "cascading" wire center distribution method under the "hold harmless" transitional mechanism. In support thereof, Silver Star submits the following:

Silver Star is a facilities-based local exchange carrier ("LEC") providing telecommunications services in Afton, Wyoming, in competition with US West which is the incumbent non-rural LEC for the Afton wire center area. The Commission's forward-looking

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[1] In the Matter of Federal-State Joint Board on Universal Service, *Ninth Report & Order and Eighteenth Order on Reconsideration*, CC Docket No. 96-45, FCC 99-306, 64 Fed. Reg. 67416 (December 1, 1999) ("*Ninth Report and Order*"). This limited Request for Reconsideration is not intended to reflect Silver Star's position with respect to the overall merits of the Universal Service plan adopted in the *Ninth Report and Order*. This Petition is intended to bring to the attention of the Commission one aspect of the rules that, in Petitioner's view, leads to an intended and arbitrary result inconsistent with the Commission's stated policies.

cost model results indicate that the Afton wire center is a high-cost service area.[2] By Order of the Public Service Commission of Wyoming issued September 13, 1999, Silver Star was designated an Eligible Telecommunications Carrier ("ETC") within Afton.[3]

In the *Ninth Report & Order*, the Commission established new universal service high-cost support procedures using a forward-looking cost model approach. The results of the model determine supported costs and payments to ETC LECs serving non-rural incumbent LEC service areas. Universal service costs are calculated at the wire center level according to the model and then "rolled-up" (totaled) on a statewide average basis for all non-rural incumbent LEC study areas within each state. If the statewide average cost exceeds a benchmark level of cost (represented as 135% of the national average model cost), qualifying LECs are to recover, through the new Federal Universal Service support plan, a portion of those costs that exceed 135% of the national average.[4]

The results of the cost model yield seven states for which costs exceed the benchmark 135% of the national average. Universal service high-cost support established by the model procedures is to be targeted to individual wire centers where model costs also exceed the 135%

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[2] Afton covers an area of approximately 155 square miles. According to the Commission's model cost results summary, the wire center contains 1,665 switched lines.

[3] *See* September 13, 1999 Letter to the Commission from the Commissioners of the Public Service Commission of Wyoming. The September 13 Letter informs the Commission that Silver Star was granted ETC status in Afton. While the September 13 Letter is submitted in the context of policy support for a study area waiver, neither Silver Star nor its affiliate parent Silver Star Telephone Company, Inc., are seeking such a waiver at this time. The September 13 Letter nevertheless illustrates the differences in cost and rate characteristics, as well as the cost recovery averaging capabilities, of large LECs serving both high-cost and low-cost areas compared to the cost and cost recovery characteristics of carriers, such as Silver Star, concentrating on rural high-cost areas.

[4] *See* 47 C.F.R. § 54.309(a)(1)-(4).

of the national average benchmark.[5] Furthermore, per-line support is to be available to ETCs serving specific wire centers based on the actual number of lines served in the specific wire center.[6] In this manner, the Commission's public policy objectives of targeted and portable universal service support are partially served by reflecting allocation of support to individual wire centers and by recognizing differing per-line support for different wire centers.

Since only seven states qualified for universal service support under the cost model, many non-rural incumbent LEC service areas that currently receive support do not qualify for model-driven support under the new rules. In order to prevent abrupt shifts in cost recovery, the Commission also established a "hold harmless" procedure over and above the model-driven plan. Under the apparent procedures, qualifying LECs will receive support based either on the current level of Universal Service high-cost support (under the hold-harmless provision) or on the cost model, depending on which approach yields greater support.[7] A carrier qualifying for "hold harmless" cost recovery will receive Universal Service high-cost support at current levels for a transition period after which support will be permanently established under the cost model rules.[8]

A feature of the "hold harmless" provision is the requirement that support will be

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[5] The wire center allocation issue was the subject of a recent reconsideration by the Commission on its own motion. In the Matter of Federal-State Joint Board on Universal Service, *Nineteenth Order on Reconsideration*, CC Docket No. 96-45, FCC 99-396, released December 17, 1999. The Commission apparently still has questions regarding the accuracy of the quantity and wire center location of loops. *Id.* at para. 9. The effect that accurate loop information or other relevant input data changes could or will have on the model results and ultimate universal service high-cost support amounts cannot be determined at this time.

[6] 47 C.F.R. § 54.309(a)(4).

[7] *See* 47 C.F.R. § 54.309(a)(5).

[8] The Commission intends for the "hold-harmless" provision to be interim and to be phased-out according to a plan to be developed by the Joint Board and the Commission. *Ninth Report and Order* at para. 88.

"cascaded" to individual wire centers.[9] "Cascaded" high-cost support is targeted to the highest cost wire center(s) served by non-rural incumbent LECs in a manner that ensures complete recovery of costs in excess of the national average in highest cost wire centers first. Starting with the highest cost wire center, "hold harmless" support is assigned to that wire center until costs above 135% are completely recovered. Remaining high-cost support revenues are then directed to the next highest cost wire center until costs in that wire center above 135% are completely recovered. This process is repeated in sequence, from the highest cost wire center to lower cost wire centers, until the available "hold harmless" support revenues are exhausted.[10]

Accordingly, the Commission has established two separate and disparate mechanisms for the distribution of high-cost support to individual wire centers. Model-driven support is allocated to all high-cost wire centers on the basis of wire center specific costs [11] while hold harmless support is distributed to the highest cost wire centers until hold harmless support is exhausted. It is the significant deviation between the two methodologies as well as the mutually exclusive application of one or the other wire center distribution approaches which creates an arbitrary and anomalous result for the State of Wyoming. In six of the seven states where model-driven costs exceed hold harmless amounts, support is distributed solely under the new wire center model-based allocation rules. The seventh state, Wyoming, is the single exception

[9] *Ninth Report and Order* at paras. 82-85.

[10] *Id. See also* 47 C.F.R. § 54.311(b).

[11] *See* 47 C.F.R. § 54.309(b).

because in Wyoming, hold harmless revenues exceed model-driven support.[12] This absolute nature of the rules provisions results in Wyoming high-cost support being distributed solely under the cascading hold harmless rules rather than the model-driven rules even though the cost model support result would amount to three-fourths of the total expected support to the State.

Petitioner requests that the Commission address this anomaly in the new Universal Service rules and determine that the model-driven rules are appropriate for distribution to wire centers for at least the portion of high-cost support representative of the model results.[13] Model-driven wire center cost allocation provisions more appropriately and more accurately recognize the long term public policy objectives of the new high-cost support rules.

Silver Star serves over 1,000 customers in Afton, Wyoming. US West is the incumbent non-rural LEC. Under the model-driven wire center allocation rules, ETCs providing service in Afton would qualify for high-cost support of approximately \$8.51 per loop served in the Afton wire center. However, under the hold harmless approach, the Afton wire center receives no allocation of support. Nevertheless, apparently upon expiration of the hold harmless support mechanism, ETCs in Afton would receive support based on the wire center allocation according to the model rules.

The allocation of high-cost support to individual wire centers should be targeted to actual cost levels to avoid providing support where support is not needed and to provide support where actual cost levels indicate support is required. The cascading approach of the hold harmless

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[12] According to the Commission's results, model-based forward looking support is calculated to be \$3,292,267 for the non-rural incumbent LEC service areas in Wyoming while the hold harmless amount is \$4,404,012.

[13] Wyoming appears to be the only state where this anomaly occurs. Nevertheless, the correction proposed herein should also be applied in other states to the extent the same circumstances may arise.

provisions does not accomplish these basic targeting goals. Moreover, because the long-term wire center distribution method is to be based on the cost model provisions of Section 54.309 of the Commission's rules, and because the model result support amounts in Wyoming currently equate to approximately three-fourths of the total support available, it is appropriate to apply the model method wire center distribution approach in Wyoming. Therefore, Petitioner requests that the Commission reconsider the exclusive application of the hold harmless wire center cascading provisions in the State of Wyoming and instead allocate support consistent with the model method to be employed in the other six states.

Such a distribution must take into account the disparity between the model-driven and the hold harmless support. The hold harmless wire center distribution provisions, as applied in Wyoming, leads to extreme amounts of support per month per loop (as high as $1,191.80 per month per line) for a small number of wire centers with no support allocated to other high cost wire centers. The model wire center distribution approach would distribute more reasonable amounts to a larger number of high-cost wire centers. The model-driven wire center allocation approach would target $170,071 of a total $3,292,267 State support to the Afton wire center. Under the hold harmless approach, no amount of $4,404,012 total state support would be "cascaded" to the Afton wire center. The Commission could choose to first allocate the model-driven amounts ($3,292,267) as prescribed by the model-driven wire center distribution rules and then allocate the remaining difference ($1,111,745) on the cascading method. In the alternative, the Commission could allocate the remaining amount to all qualifying wire centers on a pro rata basis. The additional pro rata allocation could be reduced in accordance with the ultimate transition plan.

In either case, the long-term policy of the Commission's new high-cost support rules is better met with the adoption of the changes requested. High-cost support would be more properly targeted from the beginning to the wire centers identified by the cost model while the intended benefits of the hold harmless policy would continue to serve the citizens of Wyoming for the hold harmless transition period. There will be no policy benefit in requiring ETCs serving high cost wire centers to wait until the hold harmless support is reduced or eliminated to receive the support intended for high cost wire centers such as Afton. Grant of this request will simply recognize the benefits of the new Universal Service high-cost support program in a more rational, timely, and less arbitrary manner without disturbing the overall intent of the hold harmless provision.

Respectfully submitted,

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January 3, 2000

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Petition for Reconsideration" was served this 3rd day of January, 2000, by first class, U.S. Mail, postage prepaid to the following parties:

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